



DEPARTMENT OF THE TREASURY  
Internal Revenue Service

1100 Commerce Street  
MS:4920:DAL  
Dallas, TX 75242

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

September 22, 2009

Release Number: **201449001**  
Release Date: 12/5/2014

Person to Contact:  
Identification Number:  
Contact Telephone Number:  
In Reply Refer to:  
EIN:

**LAST DATE FOR FILING A PETITION WITH THE  
TAX COURT, THE CLAIMS COURT, OR THE  
UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF COLUMBIA: December 21, 2009**

**CERTIFIED MAIL – RETURN RECEIPT REQUESTED**

Dear

This is a Final Adverse Determination as to your exempt status under section 501(c)(3) of the Internal Revenue Code (IRC).

Our adverse determination was made for the following reasons:

Exemption from income tax is a matter of legislative grace and taxpayers have the burden of establishing their entitlement to exemption. You have not demonstrated that you are operated exclusively for charitable, educational, or other exempt purposes within the meaning of IRC section 501(c)(3). In addition, you have maintained very few books and records. Section 6033 of the IRC requires organizations exempt from tax to keep such records and render such statements as are required by such rules and regulations as the Secretary may prescribe. Treasury Regulations section 1.6033-2 (h)(2) requires organizations exempt from tax to submit such additional information as may be required by the Internal Revenue Service for the purpose of inquiring into the organization's exempt status.

Based upon the above, we are revoking your organization's exemption from Federal income tax under section 501(c)(3) of the Internal Revenue Code retroactively to January 1, 20XX. You have agreed to this determination by signing Form 6018-A on August 17, 20XX.

Contributions to your organization are no longer deductible under section 170 of the Internal Revenue Code.

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Processing of income tax returns and assessment of any taxes due will not be delayed should a petition for declaratory judgment be filed under section 7428 of the Internal Revenue Code.

If you decide to contest this determination in court, you must initiate a suit for declaratory judgment in the United States Tax Court, the United States Claims Court or the District Court of the United States for the District of Columbia before the 91<sup>st</sup> day after the date this determination was mailed to you. Contact the clerk of the appropriate court for the rules for initiating suits for declaratory judgment.

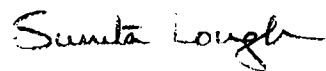
You also have the right to contact the office of the Taxpayer Advocate. However, you should first contact the person whose name and telephone number are shown above since this person can access your tax information and can help you get answers. You can call 1-877-777-4778 and ask for Taxpayer Advocate assistance. Or you can contact the Taxpayer Advocate from the site where the tax deficiency was determined by calling ' or writing to:

Internal Revenue Service  
Office of Taxpayer Advocate

Taxpayer Advocate assistance cannot be used as a substitute for established IRS procedures, formal appeals processes, etc. The Taxpayer Advocate is not able to reverse legal or technically correct tax determinations, nor extend the time fixed by law that you have to file a petition in the United States Tax Court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely yours,



Sunita Lough  
Director, EO Examinations



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY

Internal Revenue Service  
TE/GE - EO DIVISION, MDP 13  
801 BROADWAY, ROOM 397  
NASHVILLE, TN 37203-3816

July 10, 2009

Taxpayer Identification Number:

Form:

990

Tax Year(s) Ended:

December 31, 20XX

Person to Contact/ID Number:

Contact Numbers:

Telephone:

Fax:

Certified Mail - Return Receipt Requested

Dear \_\_\_\_\_ :

We have enclosed a copy of the report of our findings explaining why we believe revocation of your exempt status under section 501(c)(3) of the Internal Revenue Code (Code) is necessary.

If you accept our findings, take no further action. We will issue a final revocation letter.

If you do not agree with our proposed revocation, you must submit to us a written request for Appeals Office consideration within 30 days from the date of this letter to protest our decision. Your protest should include a statement of the facts, the applicable law, and arguments in support of your position.

An Appeals officer will review your case. The Appeals office is independent of the Director, EO Examinations. The Appeals Office resolves most disputes informally and promptly. The enclosed Publication 3498, *The Examination Process*, and Publication 892, *Exempt Organizations Appeal Procedures for Unagreed Issues*, explain how to appeal an Internal Revenue Service (IRS) decision. Publication 3498 also includes information on your rights as a taxpayer and the IRS collection process.

You may also request that we refer this matter for technical advice as explained in Publication 892. If we issue a determination letter to you based on technical advice, no further administrative appeal is available to you within the IRS regarding the issue that was the subject of the technical advice.

If we do not hear from you within 30 days from the date of this letter, we will process your case based on the recommendations shown in the report of examination. If you do not protest this proposed determination within 30 days from the date of this letter, the IRS will consider it to be a failure to exhaust your available administrative remedies. Section 7428(b)(2) of the Code provides, in part: "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted its administrative remedies within the Internal Revenue Service." We will then issue a final revocation letter. We will also notify the appropriate state officials of the revocation in accordance with section 6104(c) of the Code.

You have the right to contact the office of the Taxpayer Advocate. Taxpayer Advocate assistance is not a substitute for established IRS procedures, such as the formal appeals process. The Taxpayer Advocate cannot reverse a legally correct tax determination, or extend the time fixed by law that you have to file a petition in a United States court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling. You may call toll-free 1-877-777-4778 and ask for Taxpayer Advocate Assistance. If you prefer, you may contact your local Taxpayer Advocate at:

If you have any questions, please call the contact person at the telephone number shown in the heading of this letter. If you write, please provide a telephone number and the most convenient time to call if we need to contact you.

Thank you for your cooperation.

Sincerely,

Sunita B Lough  
Director, EO Examinations

Enclosures:  
Publication 892  
Publication 3498  
Report of Examination  
Form 6018-A

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Name of Taxpayer		Year/Period Ended December 31, 20XX

July 10, 20XX

### THE ISSUES

- 1) Whether \_\_\_\_\_ is actively engaged primarily in activities that accomplish its exempt purpose?
- 2) Whether \_\_\_\_\_ operated exclusively for exempt purposes within the Internal Revenue Code Section 501(c)(3)?

### THE FACTS

\_\_\_\_\_, henceforth "the organization" received income tax exemption as described in IRC 501(c)(3) on January 30, 20XX. The books and records of the organization for the period ending December 31, 20XX were examined on October 15, 20XX. The organization also failed to file Form 990 return for the period ending December 31, 20XX until our examination. With the exception of its organizing documents, the organization has carried on very little of its exempt purpose activities, and therefore has generated little or no books and records to demonstrate its ability to carry on its exempt purpose activities. At the time of our field examination in 20XX, the organization had no bank account of its own, or any other financial record to meet its public support test. \_\_\_\_\_, the founder of the organization was the only officer during the audit who also manages \_\_\_\_\_, a for-profit company. Per interview with the founder, he stated that he spends about 25 hours each month running the affairs of the organization; the bulk of his time is spent running the for-profit company because as he put it "it is the company that pays the bills". In its Form 990-EZ return for the year ending December 31, 20XX secured during the field examination, the organization reported \$0 in total revenue, and \$0 in total expense. Essentially the organization has carried out very little of its exempt purpose activities and/or has been inactive since it was granted tax exemption as exemplified by lack records for these activities.

### Background

\_\_\_\_\_ was first incorporated under the laws of the State of \_\_\_\_\_ as a non-stock, nonprofit corporation on February 07, 20XX; on January 17, 20XX dissolution of the organization was filed with the State of \_\_\_\_\_, and reincorporated in the State of \_\_\_\_\_ under the same name on December 28, 20XX apparently before the dissolution with State of \_\_\_\_\_ was filed and completed. The Internal Revenue Service went through a lengthy Form 1023 application process and sent at least eight letters requesting additional information from organization in order to clarify several operational, employee/officer

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compensation as well as activity issues in its application for exemption, and often the organization's responses were either incomplete or inadequate resulting in additional correspondence between the IRS and organization. For example, in IRS Letter 1312 dated June 14, 20XX, the organization was asked to provide a copy of its typical DMP customer contract, customer referral agreement to other organizations in some of the questions; in its response received on July 25, 20XX the organization stated "When our 501c3 application was initially submitted, we had aspirations of becoming a debt management, settlement, and counseling services organization. Since that time, our organization has changed its mission by deleting those services and reorganizing as a strictly financial education organization". In another IRS Letter 2382 dated December 12, 20XX item number 5 states "The website still refers to the organization as 'financial literacy, credit counseling and debt management firm'. The organization will need to remove the activities the organization is not conducting. Please provide copies of the corrected web pages." Item number six of the same letter states "also when conducting a search on the Internet for the organization...the organization is listed as a debt settlement and management organization and debt counseling organization. If the organization is not involved in debt management and counseling services, provide an explanation as to why the organization is advertized as debt management organization. The organization will need to remove this activity if it is not involved in debt management and provide documentation that it is no longer conducting the activities".

In a Determination Letter dated January 30, 20XX, was determined to be exempt from federal income tax as an organization described in IRC Section 501(c)(3). At the time of its application for federal income tax exemption, was located ; at the time of our initial contact for our field examination, the organization was located at ; by the date of our field examination, the organization had moved to Research of the organization by the examiner on the website of the Secretary of State, State of shows current status as "ADMINISTRATIVELY DISSOLVED," with Certification of Administrative Dissolution dated August 22, 20XX; nearly two months before our field examination.

was founded by , who is also the founder and President of a for-profit company. In its response letter received on July 25, 20XX to item number 9, the organization stated "we refer and receive referral clients from the following agencies, these agencies/organizations are selected by continuous referral business to our organization. Referral activity is on a non-contractual basis" the officer listed : founded by founded by among others, both officers are also listed as board members of

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**under examination. The President is also a founding member of , a marketing name of a collaboration of seven for-profit business formed together to increase their marketability and profitability.**

**Activity Description**

In SECTION <sup>0</sup> of its By-Laws, the organization described its exempt purpose as follows:  
 “ is organized for charitable and educational purposes under section 501(c)(3) of the Internal Revenue Code, more specifically to provide relief of the distressed by providing affordable credit counseling, debt management and debt settlement services and to educate the public at large, particularly in the and surrounding areas, about credit-related issues via financial literacy seminars”

In PART IV, Narrative Description of your Activities of Form 1023 Application for exemption, the organization provided the following summary of its activities:

**Past Activities:**

“From February <sup>20XX</sup> through June <sup>20XX</sup>, we aggressively sought to educate the public about credit-related issues by promoting our free financial literacy seminars held at local public libraries in on a rotating basis. These seminars further our exempt purposes by providing free consumer credit education to those who would not otherwise have such. has earned the title of “ ” for more than a decade, according to Fortune Magazine and SMR Research Corp., a Hackettstown, N.J. based business research firm that studies loan markets and lenders. The total personal bankruptcy filing rate of the was 0 per 0 adults – almost 0 times the national rate. was birthed to fill a deep-seeded void in and surrounding areas – a reliable, dedicated, affordable, knowledgeable, non-predatory source of personal financial management. After serving the community for several years, the management team has discovered that many people have great financial woes and simply do not know where to turn. Unfortunately, these people find themselves facing foreclosures, bankruptcies, and declined credit application. Therefore, sponsors free financial literacy seminars to individual consumers and community organizations, educating clients on the essentials of smart financial planning and providing all individuals with a better understanding about the proper use of credit.....”

**Present Activities:**

“Currently, is meeting the increasing demand for credit counseling and debt management. offers confidential credit management education, debt

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counseling, debt settlement and debt management services to consumers nationwide with a primary focus in the \_\_\_\_\_ area. The majority our clients are heavy laden with debt and simply need some relief from their distress and a glimpse of hope. \_\_\_\_\_ management team works diligently to assist clients for the most affordable rate available. For those who have the resources, we are able to also negotiate debt with our \_\_\_\_\_, reducing the debt by up to 0 % of the original amount owned. Doing so provides our clients with additional peace of mind from credit calls demanding payment

In addition, we are continuing our efforts to educate the community about consumer credit via our financial literacy seminars. Because of our limited funding, we are unable to adequately market our services through the local media. Therefore, we are seeking other alternatives to increase public awareness about \_\_\_\_\_ and its services. However, we are witnessing increased interest in our debt management plan and debt settlement services via word-of-mouth publicity. Thus, we are spending 99 % of our time providing credit counseling, debt management and debt settlement services. Though we are pleased with the increased interest in these services, we realize the importance of marketing and presenting our financial literacy seminars. This is particularly important, as our goal is to differentiate ourselves by requiring all clients seeking credit and debt counseling services to first go through financial and credit education classes provided by \_\_\_\_\_ at no cost to the client.

Also, as a provider of a personal financial management instructional course, we are petitioning approval from the Executive Office for United States Trustees to be placed on their list of providers for those considering bankruptcy under the Bankruptcy Reform Law. Such approval as a nonprofit budget and credit counseling agency is being requested as well".

During the year ended December 31, 20XX - the year under examination the organization had very little activity at the time of the examination. The founder stated that the organization has provided few financial education and literacy programs to the community at large in the area of home buying, money management, credit building, investment 101 lectures etc at no cost to the participants to help the community make informed decision on financial matters. Asked what was the primary source of financial support for the organization the officer stated that he contributes funds as well as solicit donations from participants at the end of their workshop sessions. The organization provided little or no records of it activities, the organization had no bank account, bank statements records, it provided a list of about 35 signed-in participants for the year 20XX. During the examination interview, the officer was asked how many hours does he spend running \_\_\_\_\_ exempt organization since he is also involved with \_\_\_\_\_ for-profit companies, the officer stated that he spends about 25 hours a month on the exempt activities mostly responding to online enquiries and contacting people looking for information through the website: \_\_\_\_\_; the organization has

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essentially become web-based.

As previously stated, the organization provided very little records of its activities, the Organization has no employees, only volunteers; it provided two one-page Board meeting minutes one on February 07, 20XX and the other on September 05, 20XX. No public support contributions, education and outreach, revenue or expenditure, bank statement records were provided by the organization. Upon subsequent discussion and request, the organization provided three records of DMP agreements with three clients, two of these were entered into in 20XX, and one in January of 20XX which shows the organization did not totally stop DMP activities in 20XX as previously indicated.

### **The LAW**

Section 501(a) of the Internal Revenue Code provides that an organization described in section 501(c)(3) is exempt from income tax. Section 501(c)(3) of the Code exempts from federal income tax corporations organized and operated exclusively for charitable, educational, and other purposes, provided that no part of the net earnings inure to the benefit of any private shareholder or individual. The term charitable includes relief of the poor and distressed. Section 1.501(c)(3)-1(d)(2), Income Tax Regulations.

The term educational includes (a) instruction or training of the individual for the purpose of improving or developing his capabilities and (b) instruction of the public on subjects useful to the individual and beneficial to the community. Treas. Reg. § 1.501(c)(3)-1(d)(3). In other words, the two components of education are public education and individual training.

Section 1.501(c)(3)-1(a)(1) of the regulations provides that, in order to be exempt as an organization described in section 501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

Section 1.501(c)(3)-1(c)(1) of the regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities that accomplish one or more of such exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose. The existence of a substantial nonexempt purpose, regardless of the number or importance of exempt purposes, will cause failure of the operational test. Better Business Bureau of Washington, D.C. v. U.S., 326 U.S. 279 (1945).

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Educational purposes include instruction or training of the individual for the purpose of improving or developing his capabilities and instruction of the public on useful and beneficial subjects. Treas. Reg. § 1.501(c)(3)-1(d)(3). In Better Business Bureau of Washington D.C., Inc. v. United States, 326 U.S. 279 (1945), the Supreme Court held that the presence of a single non-exempt purposes, if substantial in nature, will destroy the exemption regardless of the number or importance of truly exempt purposes. The Court found that the trade association had an "underlying commercial motive" that distinguished its educational program from that carried out by a university.

An organization must establish that it serves a public rather than a private interest and "that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests." Treas. Reg. § 1.501(c)(3)-1(d)(1)(ii). Prohibited private interests include those of unrelated third parties as well as insiders. Christian Stewardship Assistance, Inc. v. Commissioner, 70 T.C. 1037 (1978); American Campaign Academy v. Commissioner, 92 T.C. 1053 (1989). Private benefits include an "advantage; profit; fruit; privilege; gain; [or] interest." Retired Teachers Legal Fund v. Commissioner, 78 T.C. 280, 286 (1982).

Rev. Rul. 69-441, 1969-2 C.B. 115, granted 501(c)(3) status to an organization with two functions: it educated the public on personal money management, using films, speakers, and publications, and provided individual counseling to "low-income individuals and families." As part of its counseling, it established budget plans, i.e., debt management plans, for some of its clients. The debt management services were provided without charge. The organization was supported by contributions primarily from creditors. By virtue of aiding low income people, without charge, as well as providing education to the public, the organization qualified for section 501(c)(3) status.

In the case of Solutions Plus, Inc. vs Commissioner of Internal Revenue (T. C. Memo 2008-21), on February 5, 2008, the tax court overwhelmingly supported the Internal Revenue Service in finding that the credit counseling organization was not a 501(c)(3) charitable or educational organization. The organization stated its intent to offer and service DMP's on a national scale. The organizations intended goal was to solicit potential clients for DMP's. There would be no other assistance provided to clients who did not qualify for DMP's. The court failed to find a meaningful education program or educational materials that the organization might send to prospective clients. It found that the organization's plans to provide seminars and workshops to high school students on sound financial management skills were an insignificant part of its overall activities. It held that the organization's activities were primarily structured to market, determine eligibility for, and enroll individuals in DMP's. The court concluded that the sale of

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DMP's was the organizations primary reason for existence, and its charitable and educational purposes were, at best, minimal. It held that the organization did not qualify for tax-exempt status under section 501(c)(3).

Outside the context of credit counseling, individual counseling has, in a number of instances, been held to be a tax-exempt charitable activity. Rev. Rul. 78-99, 1978-1 C.B. 152 (free individual and group counseling of widows); Rev. Rul. 76-205, 1976-1 C.B. 154 (free counseling and English instruction for immigrants); Rev. Rul. 73-569, 1973-2 C.B. 179 (free counseling to pregnant women); Rev. Rul. 70-590, 1970-2 C.B. 116 (clinic to help users of mind-altering drugs); Rev. Rul. 70-640, 1970-2 C.B. 117 (free marriage counseling); Rev. Rul. 68-71, 1968-1 C.B. 249 (career planning education through free vocational counseling and publications sold at a nominal charge). Overwhelmingly, the counseling activities described in these rulings were provided free, and the organizations were supported by contributions from the public.

The Credit Repair Organizations Act (CROA), 15 U.S.C. § 1679 *et seq.*, effective April 1, 1997, imposes restrictions on credit repair organizations, including forbidding the making of untrue or misleading statements and forbidding advance payment, before services are fully performed. 15 U.S.C. § 1679b. Significantly, section 501(c)(3) organizations are excluded from regulation under the CROA.

The CROA defines a credit repair organization as:

- (A) any person who uses any instrumentality of interstate commerce or the mails to sell, provide, or perform (or represent that such person can or will sell, provide, or perform) any service, in return for the payment of money or other valuable consideration, for the express or implied purpose of—
  - (i) improving any consumer's credit record, credit history, or credit rating, or
  - (ii) providing advice or assistance to any consumer with regard to any activity or service described in clause (i).

15 U.S.C. § 1679a(3). The courts have interpreted this definition broadly to apply to credit counseling agencies. The Federal Trade Commission's policy is that if an entity communicates with consumers in any way about the consumers' credit situation, it is providing a service covered by the CROA. In Re National Credit Management Group, LLC, 21 F. Supp. 2d 424, 458 (N.D.N.J. 1998).

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Businesses are prohibited from cold-calling consumers who have put their phone numbers on the National Do-Not-Call Registry, which is maintained by the Federal Trade Commission. 16 C.F.R. § 310.4(b)(1)(iii)(B); 47 C.F.R. § 64.1200(c)(2). Section 501(c)(3) organizations are not subject to this rule against cold-calling. Because 501(c)(3) organizations are exempt from regulation under the CROA and the cold-calling restrictions, organizations that are involved in credit repair have added incentives to be recognized as section 501(c)(3) organizations even if they do not intend to operate primarily for exempt purposes.

### **GOVERNMENT'S POSITION**

In order to qualify for exemption under section 501(c)(3), an organization must be both organized and operated to achieve a purpose that is described under that Code section. has not demonstrated its ability to operate as public charity organization by its inactivity, failure to devote the necessary time to solicit public support in order to raise funds to carry out the public charity activities for which it was granted tax exempt status. Though the examination uncovered no evidence of private inurement from the little record provided by the organization, it is clear that the founder of the organization spends the bulk of his time managing his for-profit companies, and has little or no time to manage the organization or recruit someone to do so in order to grow the exempt organization. The operation of exempt organization with for-profit company with essentially identical names, by the same officers, in the same office facility, use of the same equipments under the similar trade or business raises very serious concern and gives the appearance of private benefit as it is very easy to commingle books and records, clients, revenues, expenditure etc, and very difficult to tell where exempt organization ends and for-profit company begins. Since the organization stopped its DMP activities in <sup>20XX</sup> available records including the Past and Present activities listed above show that has not really been able to carry out any meaningful exempt purpose activity.

### **TAXPAYER POSITION**

The position of with respect to the issues, facts, applicable law and government's position as discussed in this report is unknown at this time. will be allowed 30 days to review this report and respond.

### **CONCLUSION**

has not demonstrated its ability to operate exclusively for exempt purposes, because of its continued inactivity, inability to invest the necessary time and resources to solicit public support to firmly establish the organization in the community. In *B.S.W. Group, Inc. v. Commissioner*, 70 T.C. 352 (1978) (citing lack of solicitation of contributions and sole support from fees as factors disfavoring exemption); *Federation Pharmacy Services*, 625 F.2d at 807 (the

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absence of contributions or of a plan to solicit contributions, which are characteristic of a charitable institution, militated against the finding of tax-exempt status). It is clear that the organization failed both its operational and public support tests as demonstrated by this examination and should be revoked effective January 01, 20XX.